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OFFICE OF PETITIONS

In re Application of :
Biby et al. :
Application No. 10/670,486 : ON APPLICATION FOR
Filed: September 25, 2003 : PATENT TERM ADJUSTMENT
Atty Docket No. 199-0018US-D :
Title: SYSTEM AND METHOD :
OF MONITORING VIDEO AND/OR :
AUDIO CONFERENCING THROUGH A :
RAPID-UPDATE WEBSITE :

This is in response to the "REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT," filed May 26, 2009. Applicant requests that the determination of patent term adjustment be increased by four hundred seventy-eight (478) days to one thousand, five hundred thirty-one (1531) days. Applicant requests this correction on the basis that the Office will take in excess of three years to issue this patent and in light of the recent court decision in Wyeth v. Dudas, 580 F. Supp. 2d 138, 88 U.S.P.Q. 2d 1538 (D.D.C. 2008).

As the instant application for patent term adjustment requests reconsideration of the patent term adjustment as it relates to the Office's failure to issue the patent within 3 years of the filing date, a decision is being **held in abeyance** until after the actual patent date. Knowledge of the actual date the patent issues is required to calculate the amount, if any, of additional patent term patentee is entitled to for Office failure to issue the patent within 3 years. See § 1.703(b).

Applicant is given **TWO (2) MONTHS** from the issue date of the patent to file a written request for reconsideration of the patent term adjustment for Office failure to issue the patent

within 3 years. A copy of this decision should accompany the request. Applicant may seek such consideration without payment of an additional fee. However, as to all other bases for seeking reconsideration of the patent term adjustment indicated in the patent, all requirements of § 1.705(d) must be met. Requests for reconsideration on other bases must be timely filed and must include payment of the required fee.

Rather than file the request for reconsideration of Patent Term Adjustment at the time of the mailing of the notice of allowance, applicant is advised that they may wait until the time of the issuance of the patent and file a request for reconsideration of the patent term pursuant to 37 CFR 1.705(d). The USPTO notes that it does not calculate the amount of time earned pursuant to 37 CFR 1.702(b) until the time of the issuance of the patent and accordingly, the Office will consider any request for reconsideration of the patent term adjustment due to an error in the calculation of 37 CFR 1.702(b) to be timely if the request for reconsideration is filed within two months of the issuance of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

Applicants are reminded that any delays by the Office pursuant to 37 CFR 1.702(a)(4) and 1.702(b) and any applicant delays under 37 CFR 1.704(c)(10) will be calculated at the time of the issuance of the patent and applicants will be notified of the revised patent term adjustment to be indicated on the patent in the Issue Notification letter that is mailed to applicants approximately three weeks prior to issuance.

The Office of Data Management has been advised of this decision. This matter is being referred to the Office of Data Management for issuance of the patent.

Telephone inquiries regarding this decision should be directed to Senior Attorney Paul Shanoski at (571) 272-3225.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions